HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.18824 of 2007

%12-12-2004

Sri Durga Industries, Vijayawada, a partnership firm
rep. by its Partner, kosuri Nookaraju Achary, Vijayawada.

..Petitioner

and

$ Tirumala Tirupathi Devastanams, rep. by its Executive Officer, Tirupathi and others.

..Respondents.

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! **Counsel for petitioner : Sri K. Sarvabhouma Rao.**

^ **Counsel for Respondent No.1: Sri Y.V.Ravi Prasad, SC for TTD.**
^Counsel for Respondent No.2: Sri V.T.M Prasad.
^Counsel for Respondent No.3: None appeared.

? Cases referred

1 (1996) 6 SCC 22
2 (1994) 4 SCC 104
3 (2000) 6 SCC 293
4 (2004) 12 SCC 327
5 AIR 1954 SC 592
6 (1973) 3 SCC 864
7 (1979) 3 SCC 489
8 (1983) 3 SCC 379
9 (1986) 1 SCC 264
10 (1996) 6 SCC 22
11 (2002) 1 SCC 216

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.18824 of 2007

Dated: .12.2007

Between:

Sri Durga Industries, Vijayawada, a partnership firm rep. by its Partner, Kosuri Nookaraju Achary, Vijayawada.

..Petitioner.

and

Tirumala Tirupathi Devastanams, rep. by its Executive Officer, Tirupathi and others.

..Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.18824 of 2007

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ORDER:

It is represented that the 3rd respondent had been served. W.V.M.P.No.2290 of 2007 is filed by R2- Sri Durga Malleswara Swamy Varla Devastanam, Indrakeeladri, Vijayawada, represented by its Executive Officer, Vijayawada. R1 also filed counter-affidavit. This Court issued rule nisi on 06.09.2007 and granted interim stay of all further proceedings until further orders, in W.P.M.P.No.24186 of 2007. At the request of the counsel on record, the matter is being disposed of finally.

2. Sri K. Sarvabhouma Rao, learned counsel representing the petitioner had taken this Court through the affidavit filed in support of the writ petition and would maintain that in the facts and circumstances of the case, the action impugned cannot be sustained.

3. Per contra, Sri Y.V.Ravi Prasad, learned standing counsel representing the 1st respondent and Sri V.T.M.Prasad, learned counsel representing the 2nd respondent had taken this Court through the respective stands taken in the counter-affidavits and would maintain that in the facts and circumstances of the case, the writ

petition is not a bonafide one and the same is liable to be dismissed.

4. Heard the counsel

5. Sri Durga Industries, Vijayawada, a partnership firm, represented by its partner Kosuri Nookaraju Achary filed the present writ petition for a writ of mandamus declaring the action of respondents 1 and 2 in issuing re-tender notification vide ROC.No.PR4/14867/ADVT.190/2007 dt.17.8.2007 for the work calling for tenders "to remove the existing copper plating and to refixing it an to fix copper plate to the remaining area and to gold plate the entire copper ornamental sheets" without canceling the successful lowest bid of the petitioner firm in the earlier tender notification in ROC.No.PR4/13287/ADV.172/2007 dt.3.8.2007 and without giving any reasoning for not accepting such successful bid as illegal, arbitrary and against the principles of natural justice and in violation of Articles 14 and 19 of the Constitution of India, and consequently to direct the respondents to award the work order to the petitioner firm and to pass such other suitable orders.

6. It is averred by the deponent in the affidavit filed in support of the writ petition that he is a partner of the firm and other partners are his father and brother. Hence, he is authorized and competent to file this writ petition representing the firm. It is averred that the petitioner firm is engaged in traditional jewellery work and also metal works particularly related to Temples in making ornaments, idols, chariots and plating of temples. It gained expertise in temple works having executed many such works in the major temples of Andhra Pradesh, particularly it had the unique expertise in plating temple "Gopurams", Arches, Thresholds etc. Its partners are traditional gold smiths for generations together.

7. It is further averred that under the tender notification

dt.15.4.2002, the firm was given the plating works of Sri Ammavari Temple to the 3rd storey, Vimana Gopuram etc. The work involves plating of Gold to the Copper plates prepared by the petitioner. The gold plating to the copper plates was to be done with the gold supplied by the 2nd respondent Devastanam. But there was a hitch on the part of the Devastanam in supplying the gold due to its administrative problems. However, they did all the copper work and did gold plating work of about 30% spending gold of about 25 kilograms. The rest of the work could not be done due to non supply of gold by the 2nd respondent. There arose a dispute, on which they filed a suit O.S.No.947 of 2007 on the file of the III Additional Junior Civil Judge, Vijayawada, for permanent injunction and other reliefs. However, the subject matter of the said suit is not relating to the present dispute in this writ petition. It had no significance to be referred to in this petition. Only to disclose the facts, he was mentioning about the same here.

8. It is further averred that the 2nd respondent Devastanam found it expedient to handover the project of gold plating to the 1 & 2 storey of the Pradhana Sikharam of the Ammavari Temple to the 1st respondent TTD Devastanam for the reason that it had more expertise and administrative skill in executing such works. Accordingly, the 1st respondent Devastanam issued a tender notification in ROC.No.PR4/13287/ADV.172/2007, dt.3.8.2007 calling for tenders to remove the existing copper plating and to refixing it and to fix copper plate to the remaining area and to gold plate the entire copper ornamental sheets from the licenced gold smiths and experienced artisans. Since the firm had got all the eligibility criteria, they purchased the tender schedules and put in their tenders in the name of the petitioner firm enclosing all the required documents including a

D.D. for Rs.6,00,000/- towards the Earnest Money Deposit (EMD). By that time itself their suit was pending and both the respondents were aware of the pendency of such suit and the dispute regarding the earlier work between the petitioner and the 2nd respondent Devastanam.

9. It is pertinent to mention here that there is clause No.4 of the terms and conditions of the above stated tender schedules to the effect that the contractor who attempted the same subject work earlier and left it incomplete is not eligible to participate in the tender. However, since the present work is different and since the respondents were aware that the hitch in execution of earlier work was not due to any latches on the part of the petitioner, they sold the tender schedules to it and also allowed it to participate in the tender proceedings. If at all, the petitioner incurred any disqualification under the above clause 4 of the tender schedules, the respondents would not have allowed the petitioner to participate in such tenders. Accordingly, the firm submitted its tenders duly following all the requirements. Ultimately in response to the tender notification there were only two participants including the petitioner firm. They quoted Rs.38/- per gram of gold plating labour charges where as the other participant, the 3rd respondent quoted Rs.120/- per gram for the same. The firm quoted 60 kilograms of gold for the entire work where as the 3rd respondent quoted 70 kilograms of gold. They quoted 2% wastage whereas the 3rd respondent quoted 5% wastage. The difference is enormous which works out to an approximate amount of Rs.60,00,000/-. Their technical competence had never been in dispute. Their expertise and competence is far superior to that of the 3rd respondent. The above quotations clearly show that they were the lowest bidder. The work

should have been invariably be entrusted to the firm. There were no separate financial and technical bids. As such there are no further formalities or negotiations to award the work. The lowest bidder had to be necessarily given the work. The said facts were very much disclosed on the date of opening of the tenders on 13.08.2007. That was done in the presence of both the bidders including the petitioner. Thus, they were awaiting the work orders. The respondents also told them that they would be given the work order after obtaining the administrative approvals. The 3rd respondent also requested the other respondents to return his EMD amount.

10. It is further averred that while the matter stood as above, to their shock and dismay they came across a re-tender notification in Hindu Daily News Paper dated 18.08.2007 again calling for tenders for the same work vide ROC.No.PR4/14867/ADVT.190/2007 dt.17.8.2007 issued by the 1st respondent. In the said tender notification, it was not stated as to why the earlier notification was cancelled. Further, though they stood to be the lowest bidder, they were not issued any notice of canceling the earlier tender proceedings nor did they intimate any reason for not accepting their bid. Thereafter, they made a representation dt.21.08.2007 quoting the provisions of Right to Information Act and enclosing a D.D. for Rs.20/-seeking information as to why their successful bid was not accepted. But the respondents did not respond to the same. As such, they approached the 1st respondent officials on the date of the re-tender proceedings on 29.08.2007 and enquired about the reasons for issuing the re-tender notification. But, they did not give them any acceptable reasons and represented that they had already sent back their D.D. for Rs.6,00,000/- towards EMD along with the reasons for not accepting their successful bid.

11. It is further averred that in spite of it, they insisted the respondents to sell the present re-tender schedules so as to enable them to participate in the re-tender proceedings. But, they refused to sell the schedules to them without giving any reasons. In the meanwhile, the 3rd respondent having had a cue from their earlier bid quoted Rs.39/- per gram gold plating towards labour as they could understand from the subsequent events. Since their presence as a bidder was deliberately and designedly disallowed by the 1 and 2 respondent, there remained only the 3rd respondent as the sole bidder without any competition. They had every reason to believe that the respondent officials malafide and with ulterior motives and to give an undue advantage to the 3rd respondent designedly and illegally eliminated them from the competition.

12. Further, it is averred that when they returned to Vijayawada, they found D.D. of Rs.6,00,000/- returned to them which was deposited by them during the earlier tender proceedings. But, it did not contain any reasons for not accepting their earlier successful bid. Thus, in spite of their insistence the respondents did not disclose the reasons for not accepting their bid. In fact, there are no reasons at all except to give an undue advantage to the 3rd respondent and thereby eliminating the competition. The action of the respondents 1 and 2 in putting the work to the re-tender notification is highly illegal and arbitrary. Hence, the writ petitioner approached this court praying for the reliefs specified above.

13. In the counter-affidavit of the 1st respondent, sworn to by the Executive Officer of Tirumala Tirupathi Devasthanams, Tirupathi, it is specifically averred that the allegations that the petitioner failed to complete the gold plating work due to non-supply of gold and the suit

O.S.No.947 of 2007 pending on the file of the III Additional Junior Civil Judge, Vijayawada, are not connected with the dispute in the present writ petition. It is stated that the petitioner had to be allotted with the work since he was lowest tenderer and that the 1st respondent told that the work will be entrusted to the petitioner and that the 1st respondent refused to sell the tender schedules without any reasons and that the respondent officials with malafide and ulterior motives and to give undue advantage to the 3rd respondent designedly and illegally eliminated the petitioner from the competition and therefore, the action of respondents 1 and 2 in issuing fresh tender notification by canceling the earlier tender notification is illegal and arbitrary.

14. Further, it is stated that originally the petitioner was entrusted with work relating to fabrication of gold coated copper sheets covering the Vimana Gopuram of Sri Durga Malleswara Swami Varla Devasthanam (2nd respondent herein) under an agreement dt.6.7.2002. Since the petitioner committed some irregularities, the contract was cancelled by the 2nd respondent on 9.5.2006. The said cancellation order dt.9.5.2006 was assailed in W.P.No.11113 of 2006, which was dismissed on 27.6.2006 and the same was confirmed in W.A.No.832 of 2006. It seems, a civil litigation with regard to the very same subject matter in O.S.No.947 of 2007 is also still pending. In W.A.No.832 of 2006, the learned Division Bench observed at page 16, which reads as hereunder:

> "We have given serious thought to the arguments of the learned counsel, but have not felt impressed. It is trite to say that in exercise of power under Article 226 of the Constitution, the High Court can interfere even in contractual matters to which State or its instrumentality or its agency or any public authority is a party and if the action of the State or its instrumentality/agency is found to be arbitrary or contrary to public interest, then the Court can annul the

same, but it is equally well-settled that in such matters the Court will be extremely slow to interfere in such matters. In **State of U.P. v. Bridge & Roof Co.(India) Ltd.**[1], the Supreme Court was called upon to consider whether the rates quoted by the contractor were inclusive of the sales tax, if any, on the constructional plants, materials and supplies required for the purpose of execution of the contract. The respondent, who was awarded contract for rehabilitation and improvement of certain stretch of road in Uttar Pradesh applied to the Commissioner of Sales Tax, Uttar Pradesh for composition of tax liability. The Deputy Commissioner, Sales Tax, in exercise of the power delegated to him by the Commissioner, passed order dated 27-5-1992 that sales tax should be deducted at the rate of 1% at the time of payment of balance amount. After three years, the respondent filed writ petition in Allahabad High Court questioning the deduction of sales tax. The High Court did not go into the issue of maintainability of the writ petition, but disposed of the same by observing that the Government shall deduct only 1% of the bill in question up to 31-3-1995. While setting aside the High Court's order on merits, the Supreme Court held:

> "15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D(1).
>
> 16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.
>
> 17. Secondly, whether there has been a reduction in the statutory liability on account of a change in law within the

meaning of sub-clause (4) of clause 70 of the contract is again not a matter to be agitated in the writ petition. That is again a matter relating to interpretation of a term of the contract and should be agitated before the arbitrator or the civil court, as the case may be. If any amount is wrongly withheld by the Government, the remedy of the respondent is to raise a dispute as provided by the contract or to approach the civil court, as the case may be, according to law. Similarly if the Government says that any overpayment has been made to the respondent, its remedy also is the same.

18. Accordingly, it must be held that the writ petition filed by the respondent for the issuance of a writ of mandamus restraining the Government from deducting or withholding a particular sum, which according to the respondent is payable to it under the contract, was wholly misconceived and was not maintainable in law. (See the decision of this Court in **Asstt. Excise Commr. v. Issac Peter**[2] where the law on the subject has been discussed fully.) The writ petition ought to have been dismissed on this ground alone.

21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (clause 67 of the contract). The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy — in this case, provided in the contract itself — is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226. The said article was not meant to supplant the existing remedies at law but only to supplement them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 — whether for issuance of mandamus or any other writ, order or direction — was misconceived for the reasons mentioned supra."

In **Kerala State Electricity Board v. Kurien E.Kalathil**[3], the Supreme Court considered the issue relating to maintainability of the writ petition in a contractual matter. The facts of that case were that the appellant, State Electricity Board executed an agreement dated 16-9-1981 with the respondent contractor for construction of a dam. After the commencement of the work, the State Government revised, by notification dated 30-3-1983, the minimum wages payable

to employees employed in the works mentioned in the notification, w.e.f 1-4-1983. The respondent contractor claimed that he began making the revised payments to his workers as required for the period 1-4-1983. Till December 1984, the Board reimbursed the respondent contractor. However, from January 1985 the Board stopped making the payments for labour escalation, contending that construction of a dam was not covered by the notification dated 30-3-1983. This disagreement was settled when the Industrial Tribunal made an award on 14-10-1993, holding that the notification was applicable to dam construction (in case of workers employed for construction or maintenance of roads, or building operations and for stone-breaking or stone-crushing). The award became final. On 23-12-1994 the Board wrote the respondent demanding recovery with interest of Rs.3.65 crores, which had been paid in the form of advances for various heads of work. The respondent filed a writ petition seeking to have the letter of demand quashed and also praying for payment of the amounts paid in revised wages. While the petition was pending, the Board, by an order dated 26-2-1997 terminated the contract, which the contractor challenged by filing another petition. The High Court disposed of both petitions holding that the termination of the contract was arbitrary, unjust and not in public interest and directed the Board to pay the amounts claimed by the respondent along with interest at 18%. The Supreme Court partly allowed the appeal of the Board and held:

> "The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not a writ petition under Article 226. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. .....A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property.

> Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

In **State of Jammu & Kashmir v. Ghulam Mohd. Dar**[4], the Supreme Court reiterated the settled rule that a writ of mandamus should not ordinarily be issued for enforcing the terms and conditions of a contract.

In the present case, we find that the appellant has neither pleaded in the writ petition nor any evidence has been produced before the Court to show that order dated 09.05.2006 was passed by respondent No.2 without complying with the rule of audi alteram partem. Rather, the factual matrix of the case clearly shows that order cancelling the contract was passed by respondent No.2 after giving notice and effective opportunity of hearing to the petitioner. Therefore, the learned Single Judge did not commit any error by refusing to annul order dated 09.05.2006 on the ground of violation of the rules of natural justice.

The argument of the learned counsel that exercise for cancellation of the contract was undertaken by respondent No.2 with an oblique motive appears attractive, but lacks merit and deserves to be rejected. In the affidavit filed by Sri Kosuri Nuka Raju, managing partner of the petitioner, there is no enumeration of the allegation of any personal ill-will or mala fides against the person holding the post of Executive Officer. It has also not been suggested that proceedings for cancellation of contract were initiated because the officer concerned wanted to favour someone else. Not only this, it was not even argued before the learned Single Judge that the cancellation of contract has been brought about with oblique motive. Therefore, at the appellate stage, we do not find any justification to entertain the new plea and record a finding that order dated 09.05.2006 passed by respondent No.2 is tainted by mala fides and

that too by ignoring the fact that the officer holding the post of Commissioner, Endowments and Executive Officer was not impleaded as party to the writ petition.

There is another reason for our disinclination to entertain the appellant's challenge to order dated 09.05.2006. For the reasons best known to it, the appellant has not produced copy of agreement dated 26.06.2002 to which reference has been made in paragraph 4 of the writ petition and pursuant to which the appellant started execution of the work of putting gold malam. At the hearing, learned counsel for the appellant tried to convince us that his client had not been furnished with the copy of agreement, but we are not prepared to believe this oral assertion because affidavit filed in support of the writ petition is conspicuously silent on this issue. In our considered view, by refraining to produce copy of agreement dated 26.06.2002, the appellant has deprived the Court of an opportunity to examine the terms and conditions of contract in a correct perspective and then determine whether it was a fit case for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India and, therefore, we do not find any justification to entertain its challenge to the cancellation of contract.

We are further of the view that the discretion exercised by the learned Single Judge not to entertain the appellant's challenge to the cancellation of contract, does not suffer from any infirmity. Rather, it is in consonance with the series of decisions of the Supreme Court including **Kerala Electricity Board v. Kurien E. Kalathil** (supra).

In **ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.** (supra), the Supreme Court reiterated the well settled proposition that in exercise of power under Article 226 of the Constitution, the High Court can entertain writ petition and even decide disputed questions of fact. The facts of that case were that Rassik Woodworth Limited entered into a contract with M/s.RVO Kazpishepromysyrio, a State owned Corporation of Kazakhstan for supply of 3000 MT. of tea. The payment for such tea was to be made by the Kazak Corporation by barter of goods mentioned in the schedule to the agreement dated 26.08.1993. The Kazak Corporation assigned a part of the contract to ABL International Limited. On a direction issued by Reserve Bank of India to cover the risk arising

out of the export of tea made by ABL International as per the contract, the latter approached Export Credit Guarantee Corporation of India Limited to ensure the risk of payment of consideration in the contract. On 30.09.1993, the respondent issued a comprehensive risk policy. On account of failure of Kazak Government to fulfill the guarantee given by it, ABL International lodged claim before the Export Credit Guarantee Corporation of India Limited. The latter contested the claim by saying that the ABL Corporation had changed the terms of contract without consulting it. After some correspondence, ABL International Limited filed writ petition in Calcutta High Court. The same was allowed by the learned Single Judge. On appeal, a Division Bench of that High Court reversed the order of the Single Bench and held that disputed questions of fact cannot be adjudicated by the High Court under Article 226. On further appeal, the Supreme Court referred to the earlier judgments in **K.N. Guruswamy v. State of Mysore**[5], **D.F.O. v. Ram Sanehi Singh**[6], **Ramana Dayaram Shetty v. International Airport Authority of India**[7], **Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.**[8], **LIC of India v. Escorts Ltd.**[9], **State of U.P. v. Bridge & Roof Co. (India) Ltd.**[10], and **State of Bihar v. Jain Plastics and Chemicals Ltd.**[11], followed some of them, distinguished the other judgments and laid down the following propositions:

1) While entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case has a discretion to entertain or not to entertain a writ petition. The High Courts have however imposed upon themselves certain restrictions in the exercise of this power. This plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless the impugned action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate

reasons, for which the High Court thinks it necessary to exercise the said jurisdiction.

2) Unless the action challenged in the writ petition pertains to the discharge of a public function or public duty by an authority, the courts will not entertain a writ petition which does not involve the performance of the said public function or public duty.

On merits, the Supreme Court held that Export Credit Guarantee Corporation of India Limited is an instrumentality of the State, inasmuch as, it discharges the functions of the government and acts as an agent of the government and its action do have a touch of public function or discharge of a public duty and, therefore, it could not act arbitrarily in the matter of repudiation of contract.

In our considered view, the aforementioned judgment is clearly distinguishable. In that case, the Supreme Court granted relief to the appellant because on facts it was found that an instrumentality of the government in discharge of its public law obligation had acted arbitrarily. In the case before us, the contract entered into between the parties does not have anything to do with the public law obligation of the State or governmental function. It is a matter of plain and simple contract between the parties. The work relating to putting of gold malam has nothing to do with the sovereign functions of the State. Therefore, the learned Single Judge did not commit any error by refusing to quash order dated 09.05.2006 passed by respondent No.2.

In the result, the appeal is dismissed".

15. It is further averred that as the matter stood thus, the 2nd respondent entrusted the task of removal of existing fabricated copper plates and refixing of gold coated copper sheets to Vimana Gopuram to the 1st respondent as per the directions of the Endowments Department. Accordingly, the 1st respondent had issued the tender notification vide proceedings dt.3.8.2007 calling for tenders to execute the gold coating work. The tender schedules were issued to the petitioner and also to the 3rd respondent who only participated in the

tender. The tenders were opened on 13.8.2007 and found the petitioner quoted lowest rate. Along with the tender schedule, the petitioner was also supplied with the terms and conditions of the tender. As per clause No.4 of the terms and conditions, a contractor, who was attended the same subject work earlier and left it incomplete is not eligible to participate in the tender. The petitioner knowing fully well that he was disqualified to continue the work, submitted his tender to the 1st respondent. In view of his past conduct and cancellation of his contract by the 2nd respondent for the very same work, the petitioner cannot be entrusted with the work even though he has quoted lowest rate. In these circumstances, the 1st respondent again issued a fresh tender notification in daily news papers on 18.8.2007. In the said tender process, the 3rd respondent is the sole participant by quoting a lowest rate of Rs.39/- per gram towards labour charges.

16. It is further averred that the petitioner having disqualified by the 2nd respondent to continue the gold coating work of Vimana Gopuram, ought not to have participated in the subsequent tender process. The petitioner intentionally and deliberately suppressed the fact of filing the writ petition No.11113 of 2006 and W.A.No.832 of 2006 and its dismissal and approached this Court with unclean hands. Hence, the petitioner is guilty of suppressio veri suggestion falsi. Further, the writ petitioner has no indefeasible right to claim or demand for acceptance of this tender. Even though, he had quoted the lowest rate, the petitioner cannot attribute any malafides to the action of the 1st respondent since the petitioner was already disqualified to continue the said work. The action of the 1st respondent in re-tendering the work by issuing the fresh notification is not suffered with illegality since it is a policy decision taken in the interest of the 2nd respondent

temple. The petitioner while agitating his right to continue the work in the civil Court by filing the suit mentioned supra is estopped from approaching this Court under Article 226 of the Constitution of India. Mere filing of tender schedule by the writ petitioner in response to the tender notification dt.3.8.2007 does not confer any right to him to claim for acceptance of his tender. It is always open for the 1st respondent either to accept or reject the tender of the petitioner by taking into several other aspects irrespective of quoting his lowest rates. This is the stand taken by the 1st respondent.

17. The second respondent filed counter affidavit. Though the 3rd respondent was served, none represents the 3rd respondent. Be that as it may, the 2nd respondent had taken a stand that the petitioner had got ample knowledge about the entrustment of work to TTD, Tirupati by the 2nd respondent as way back in June, 2006 itself as pointed out by this Court in the order, dated 27.06.2006 passed in W.P.No.11113 of 2006 and thus, the writ petitioner got filed only with a view to harass the officials of respondents 1 and 2 .

18. It is also averred that with regard to para 3 of the affidavit, that in respect of tender notification dated 15.04.2002 for the work relating to fabrication of gold coated copper sheets covering to Vimana Gopuram for 2nd and 1st stories, the writ petitioner entered into an agreement with the 2nd respondent Devasthanam on 06.07.2002. As the petitioner committed some irregularities in respect of the said work and failed to complete the said work years together, the 2nd respondent cancelled the contract through the proceedings No.Rc.No.E1/1001.2000, dated 09.05.2006. It is not true and correct to state that the rest of the work could not be done due to non-supply of

gold by the 2nd respondent Devasthanam. It is true that the writ petitioner filed O.S.No.947 of 2007 on the file of the III Additional Junior Civil Judge's Vijayawada, for permanent injunction and other reliefs against the respondents 1 and 2 herein and the then Executive Officer of the 2nd respondent Devasthanam in his personal capacity and the same is pending. But it is not true and correct to state that the subject matter of the said suit is not relating to the present dispute in this writ petition.

19. It is further averred that aggrieved by the proceedings in Rc.No.E1/1001/2000, dated 09.05.2006 cancelled the contract dated 06.07.2002 entrusted to the writ petitioner, prior to the filing of the suit O.S.No.947 of 2007, the writ petitioner filed W.P.No.11113 of 2006 in this Court and the said writ petition was dismissed through an order dated 27.06.2006 and against which the writ petition filed W.A.No.832 of 2006 and the same was also dismissed through a judgment dated 09.08.2006. The suit O.S.No.947 of 2007 was filed by the writ petitioner against the respondents 1 and 2 herein and another for permanent injunction against them from ever entrusting the gold malam work and sliver lining work of Rudrakhsha Mandapam of the 2nd respondent-Devasthanam to third parties without settling the accounts of the writ petitioner in respect of the works done by it and for mandatory injunction directing the defendants therein that in case if the works of Vimana Gopuram and Rudraksha are entrusted to third parties, then the writ petitioner should be allowed to take back for material spent by him in execution of the works done by him on costs basis to be determined by the Court and the same is pending.

20. It is further averred that with regard to the contents in para 4 and 5 of the affidavit are concerned, it is true that the 2nd respondent even before filing the W.P.No.11113 of 2006 by the writ petitioner, entrusted

the work of copper plating and gold coating work to the 1st respondent herein immediately after termination of the contract of the writ petitioner and sent an amount of Rs.4 crores by demand draft towards advance payment for the said work through its letter dated 16.05.2006 and the 1st respondent got issued an advertisement in Eenadu dated 19.05.2007 calling for tenders for removal of existing copper covering, re-fixing the same, gold coating to copper sheets etc., The 2nd respondent is not aware of the opening of the tender schedules on 13.08.2007 and the other things that are done with the premises of the 1st respondent Devasthanam. But the 1st respondent again issued re-tender notification in Hindu Daily newspaper dated 18.08.2007 calling for tenders for the said work. The 2nd respondent had no personal knowledge about the subsequent tender proceedings except the re-tender notification dated 18.08.2007 published in Hindu daily dated 18.08.2007.

21. It is also averred that the 2nd respondent had no personal knowledge about the things narrated in para 6 and 7 of the affidavit and it is the 1st respondent to say about the validity of the said averments as those averments are leveled against 1st respondent which are said to be done within the premises of 1st respondent Devasthanam. It is also averred that the 2nd respondent lodged a complaint with I Town Police station, Vijayawada against the partners of writ petitioner-firm and the same was registered as in Cr.No.167 of 2005 for the offences Under Sections 182 and 211 IPC and the same is till under investigation. As already stated above, even though the 2nd respondent cancelled the contract dated 06.07.2002 entrusted to the writ petitioner after following the procedure, the writ petitioner with a

malafide intention filed W.P.No.11113 of 2006 and the same was dismissed on 27.06.2006 and against which the writ petitioner filed W.A.No.832 of 2006 and the same was also dismissed on 09.08.2006. The writ petitioner with a malafide intention to some how prevent the respondents 1 and 2 to complete the work field, a suit in O.S.No.947 of 2007 is filed. Thus, the conduct of the writ petitioner is questionable. The earlier writ petitions and the suit O.S.No.947 of 2007 was filed by the writ petitioner representing by its Managing Partner Kosuru Nookaraju and the affidavit filed in support of writ petition, his son K.V.Achari, representing the writ petitioner, and in every stage of the proceedings, the deponent is changed for the reasons best known to the petitioner. On the other hand, on behalf of the said Nookaraju his another son K. Venkata Ramana, who is also a partner of petitioner firm sent a representation to the Executive Officer of the 2nd respondent on 16.07.2007 stating that they have no objections to receive the amounts towards full and final settlement of gold malam work and they are withdrawing the suit O.S.No.947 of 2007 on the file of the III Additional Junior Civil Judge, Vijayawada and he further gave an undertaking to the 2nd respondent that the Managing Partner or the other partners of the writ petitioner firm will not file any suit, any claims, damages for recovery of any amount in respect of gold malam work in future against the 2nd respondent-Devasthanam. One of the partners of the petitioner firm namely Sri Kosuri Nooka Raju gave a letter dated. nil, received by them on 16.07.2007 stating as follows:

> "I submit that all the accounts and amounts were settled by the Executive Officer of the Devasthanam in respect of Gold Malam Work and also I have no objection to receive the said amount towards full and final settlement of the gold malam work. I submit that as a Managing Partner of Sri Durga Industries and other partners of Sri Durga Industries will not file any suit, any claims, damages, for

recovery of any amounts in respect of gold malam work in future against Sri Durga Malleswara Swamy Varla Devasthanam, Indrakeeladri, Vijayawada".

22. This letter was signed by K. Venkata Ramana on behalf of Kosuru Nooka Raju. He is the son of K. Nooka Raju and also a partner of the petitioner firm. But giving to bye to the representation sent on 16.07.2007 by one of the partners K. Venkata Ramana, got filed this petition through another partner and brother K.V.Achari with a malafide intention to prevent the respondents 1 and 3 to complete the work by calling for the tenders.

23. Further specific stand had been taken that the writ petitioner had not been approached this Court with clean hands.

24. In the light of the respective stands taken by the parties, especially, in the light of the order made in W.A.No.832 of 2006 already referred to supra, this Court is of the considered opinion that the issuance of re-tender notification cannot be found fault either to be arbitrary or unconstitutional under Articles 14 or 19 of the Constitution of India. This Court also is satisfied that the writ petitioner approached this Court by suppressing several essential facts, which had been brought to the notice of this Court in the respective counter-affidavits. Hence, viewed from any angle, the impugned action cannot be found fault and accordingly, the Writ Petition shall stand dismissed with costs.

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P.S.NARAYANA,J

Dated:12.12.2007.

sj

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[1] (1996) 6 SCC 22

[2] (1994) 4 SCC 104
[3] (2000) 6 SCC 293
[4] (2004) 12 SCC 327
[5] AIR 1954 SC 592
[6] (1973) 3 SCC 864
[7] (1979) 3 SCC 489
[8] (1983) 3 SCC 379
[9] (1986) 1 SCC 264
[10] (1996) 6 SCC 22
[11] (2002) 1 SCC 216